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In the Supreme Court of the United States

OCTOBER TERM, 1975

ALVIN A. BECKWITH, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The oral opinion of the district court denying petitioner's motion to suppress evidence (Pet. App. B) is not reported. The opinion of the court of appeals (Pet. App. A) is reported at 510 F.2d 741.

JURISDICTION

The judgment of the court of appeals was entered on January 22, 1975, and a petition for rehearing *en banc* was denied March 3, 1975. The petition for a writ of certiorari was filed on April 2, 1975, and was granted on June 16, 1975. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a special agent of the Internal Revenue Service investigating possible criminal tax violations must, prior to interviewing a taxpayer who is not in custody, give him in the warnings of rights required by *Miranda* v. *Arizona* for arrested suspects prior to custodial interrogation.

CONSTITUTIONAL PROVISION INVOLVED

The pertinent portion of the Fifth Amendment to the United States Constitution provides:

> No person * * * shall be compelled in any criminal case to be a witness against himself * * *.

STATEMENT

On August 2, 1972, Special Agents Peterson and Fornili [1] of the Intelligence Division of the Internal Revenue Service called on petitioner, who was staying at the home of a friend. Their visit was prompted by the receipt of information by the Internal Revenue Service from a confidential source that petitioner had failed to report all of his income on his federal tax return (Pet. App. A 2a; A. 9, 13, 30, 45).

The agents identified themselves to the person who answered the door and stated that they wished to speak with petitioner about his taxes. They were

[1] The case had been assigned to Special Agent Peterson (A. 9). However, Special Agent Fornili accompanied Peterson in order to comply with the policy of the Intelligence Division that a special agent interview a taxpayer only in the presence of another special agent (A. 13–14).

then admitted to the house. Shortly thereafter, petitioner came downstairs to meet the agents. After the agents identified themselves and explained the purposes of their visit, petitioner told them he would like to finish dressing, if they did not "mind." The agents replied that the delay would be "fine." Petitioner thereupon went back upstairs for about five minutes and then returned (A. 14–15).

At the outset of the interview, both agents presented their credentials to petitioner. Peterson advised petitioner that he was a special agent of the Intelligence Division of the Internal Revenue Service and that one of his functions was to investigate the possibility of criminal tax fraud. He also stated that he had been assigned to investigate petitioner's federal income tax liability for the years 1966 through 1971 (A. 15, 30–31, 60, 65). Peterson then advised petitioner of his constitutional rights by reading from a card as follows (A. 16, 65–66): [2]

> Under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you

[2] The card set forth the warnings (A. 67) that the Internal Revenue Service requires a special agent to give at his initial meeting with the taxpayer. See Internal Revenue Service News Release IR-949 (1968 C.C.H. Stand. Fed. Tax Reptr., par. 6946).

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wish, seek the assistance of an attorney before responding.

Special Agent Peterson thereupon gave the card to petitioner for him to read aloud and asked him if he understood his rights. Petitioner replied that he was aware of his rights and that he knew he did not have to talk to the agents (A. 18, 21, 32). The agents then proceeded to interview petitioner with regard to his income tax liability. During the interview, petitioner's friend was present in her house (A. 37–38). The atmosphere of the interview was relatively friendly (A. 42, 47–48). Petitioner was never in custody during the interview, nor was anything said or done that might lead him to believe that he could not leave whenever he wanted (A. 33). The agents had no intention of detaining petitioner for any purpose (A. 37). Petitioner never asked that the interview be terminated (Tr. 84),[3] nor did he ever ask to see a lawyer or to have one present (A. 32, 33; Tr. 84). Petitioner testified that at no time during the interview did he conclude that having a lawyer present might be to his interest (A. 58). The interview lasted three hours (A. 22.)

During the course of the interview there were several questions that petitioner either did not want to or could not answer. The agents did not press him for answers to these questions (A. 59–60). Petitioner never told the agents that he did not want to answer any more questions, and the agents would have left had petitioner asked them to do so (A. 33, 60). Near the end of the interview, the agents asked petitioner whether the answers he

[3] "Tr." refers to the trial transcript.

had given were of his own volition or whether there had been any threats or duress. Petitioner replied that his answers were freely given (Tr. 85).

After the interview, the agents and petitioner left the house and went (separately) to petitioner's liquor store, where he kept some of his records. Agent Peterson had asked petitioner whether he would be willing to furnish his records and advised him that he had the right not to produce them. Petitioner thereupon furnished the agents with certain of his records (A. 25). After spending ten or fifteen minutes at petitioner's store, the agents departed (A. 27).

Subsequently, petitioner was indicted on two counts of willfully attempting to evade and defeat income tax for the years 1970 and 1971, in violation of 26 U.S.C. 7201. The indictment alleged that petitioner understated his true income and tax liability on his returns for those years (A. 5–6). Petitioner thereupon filed a motion to suppress evidence, alleging that he had made certain critical admissions at his interview with the agents of the Internal Revenue Service and that they had failed to warn him of his constitutional rights in accordance with *Miranda* v. *Arizona*, 384 U.S. 436 (A. 2).

After a full hearing at which Agents Peterson and Fornili and petitioner testified (A. 7–64), the district court denied petitioner's motion to suppress in an oral opinion (Pet. App. B 1b–2b). In the district court's view, *Miranda* warnings are only required when "there [are] custodial circumstances," and the court found that "there [was] no evidence whatsoever of any such situation." The court characterized the set-

ting of the agents' interview of petitioner as nothing more than one in which the agents stated to petitioner that "we are IRS agents, sit down, we would like to ask you some questions." The district court further found that petitioner "knew he could have a lawyer and he knew that he didn't have to say anything to [the agents] about it if he didn't want to" (*ibid.*).

Petitioner thereafter waived his right to a jury trial. He offered no defense to the stipulated facts (A. 70–72) and was convicted on one count of tax evasion.[4] The government's case was premised on the net worth plus nondeductible expenditures method of determining income. The evidence showed that while petitioner's reported taxable income for 1971 was $10,821.78, his true taxable income for that year was $24,637.02 (A. 71–72). The district court sentenced petitioner to five years' imprisonment and imposed a $10,000 fine plus court costs (A. 73).

The court of appeals affirmed (Pet. App. A 1a–5a). It held (Pet. App. A 3a) that the proper test under *Miranda* is whether the suspect "has been taken into custody or otherwise deprived of his freedom in any significant way" (384 U.S. at 477). Since petitioner was neither arrested nor detained against his will, was free to leave at any time, was not subjected to any coercive interrogation techniques, and was not misled by the agents, the court of appeals concluded that "it cannot be seriously argued that [petitioner]

[4] The district court dismissed the first count of the indictment, relating to the year 1970 (A. 73).

was 'compelled' to answer any questions" (Pet. App. A 3a–4a).

INTRODUCTION AND SUMMARY OF ARGUMENT

The Self-Incrimination Clause of the Fifth Amendment to the Constitution provides that "[n]o person * * * shall be compelled in any criminal case to be a witness against himself * * *." Despite its literal language, the privilege has long been construed to extend to proceedings other than criminal trials.[5] Nine years ago, in *Miranda* v. *Arizona*, 384 U.S. 436, this Court held for the first time that the self-incrimination privilege is applicable to police station interrogations, so that the defendant's statements in such circumstances might be excluded at trial unless steps were taken to insure that the statements were freely made. As the Court summarized its holding in *Miranda*: "[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination" (384 U.S. at 444).

Miranda did not hold that all incriminating statements made to law enforcement authorities are involuntary in the absence of the use of procedural safeguards prescribed by the Court. To the contrary, it

[5] See, *e.g.*, *Counselman* v. *Hitchcock*, 142 U.S. 547; *McCarthy* v. *Arndstein*, 266 U.S. 34; *Watkins* v. *United States*, 354 U.S. 178; *Malloy* v. *Hogan*, 378 U.S. 1; *In re Gault*, 387 U.S. 1.

limited its decision to "custodial interrogations" by law enforcement authorities. Moreover, *Miranda* did not leave the definition of that critical element of the decision to the lower courts, but took care to define that term itself. The Court stated: "By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way" (384 U.S. at 444). By way of footnote, the Court further explained that "[t]his is what [was] meant in *Escobedo* [v. *Illinois,* 378 U.S. 478] when [the Court] spoke of an investigation which had focused on an accused" (384 U.S. at 444, n. 4).

To implement its holding in *Miranda,* the Court outlined a series of recommended "procedural safeguards" to assure that the defendant's privilege against self-incrimination is protected. These specific guidelines, commonly known as *Miranda* rules, provide as follows (384 U.S. at 444):

> Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.

In adopting these procedural safeguards, the Court recognized that the warnings were not themselves rights protected by the Constitution but were rather measures designed as a practical reinforcement for the right against compulsory self-incrimination. As the Court observed: "[W]e cannot say that the Constitution necessarily requires adherence to any particular solution for the inherent compulsions of the

interrogation process as it is presently conducted" (*id.* at 467). See also *Michigan* v. *Tucker,* 417 U.S. 433, 443–444.

The question presented in this case is whether a special agent of the Internal Revenue Service, prior to his initial interview of a taxpayer under investigation, is required to give *Miranda* warnings although the taxpayer has not been taken into custody or otherwise deprived of his freedom. Here, such special agents, whose function is to investigate possible criminal violations of the internal revenue laws, interviewed petitioner at the home of his friend in what was indisputably a noncustodial setting. At the outset of the interview, they advised petitioner of their mission and warned him of his right not to answer their questions, of his right to consult counsel, and of the fact that his answers might be used against him in a criminal proceeding. Despite these admonitions by the agents, petitioner made statements during the interview that subsequently proved to be incriminating. Petitioner now seeks to suppress the evidentiary use of his statements at that interview solely on the ground that the agents did not give him the full *Miranda* warnings prescribed for persons in custody.

1. The decision below correctly held, as have nine other circuits, that the agents' failure to warn petitioner of his rights in accordance with *Miranda* did not justify the suppression of his statements. As this Court has made clear, the rule announced in *Miranda* reaches only custodial interrogations and does not

govern interviews by law enforcement officers in which the subject is not detained against his will.

2. Moreover, the *Miranda* rationale—that custodial interrogations are inherently coercive—has no application to the typical non-custodial interview conducted by a special agent, of which this case is representative. Those interviews are not in fact impermissibly coercive and are not conducted in the kinds of environments or under the kinds of circumstances that would justify prophylactic measures like those prescribed in *Miranda* to counter the potentially coercive atmosphere found to be inherent in incommunicado custodial questioning.

While some taxpayers may for various reasons feel impelled to cooperate with tax investigations, the harsh measure of exclusion of their statements from a subsequent judicial proceeding is inappropriate unless the statements were the product of coercion exercised by the government agents, which was clearly not the case here.

3. If some form of warning to a taxpayer under investigation is required at his initial interview by a special agent, the agents' warning in this case was sufficient to insure that petitioner's statements were voluntary. The warning employed by the special agents in this case substantially conforms to the *Miranda* formula. While the warning did not advise of an absolute right to silence, it did fully apprise petitioner of his rights under the Fifth Amendment privilege against compelled self-incrimination. As for

the right to counsel, since it does not attach at the time of a preliminary interview by a special agent, there is no basis for requiring the agents to warn the taxpayer in accordance with *Miranda* that he is entitled to appointed counsel. In fact, it is hardly unreasonable to assume that a person under investigation for criminal tax violations is ordinarily able to afford the services of an attorney.

ARGUMENT

STATEMENTS MADE BY A TAXPAYER TO AN INTERNAL REVENUE SERVICE AGENT DURING THE COURSE OF A NON-CUSTODIAL INTERVIEW IN A CRIMINAL TAX INVESTIGATION ARE ADMISSIBLE IN EVIDENCE AGAINST THE TAXPAYER EVEN THOUGH HE WAS NOT GIVEN THE WARNINGS REQUIRED BY *MIRANDA* V. *ARIZONA* IN CONNECTION WITH CUSTODIAL INTERROGATION

A. THE REQUIREMENT THAT ANY WARNING OF RIGHTS BE GIVEN APPLIES ONLY TO CUSTODIAL INTERROGATIONS

1. In *Michigan* v. *Tucker, supra,* 417 U.S. at 448, this Court reaffirmed that "[c]ases which involve the Self-Incrimination Clause must, by definition, involve an element of coercion, since the clause provides only that a person shall not be *compelled* to give evidence against himself" (emphasis in original). As a general matter, the existence of coercion is a factual question. Thus, prior to *Miranda,* when faced with a claim that law enforcement officers coerced incriminating statements from a person in custody, the Court would examine the particular circumstances of the interrogation in order to determine whether the process was so unfair as to render involuntary any statement made to

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the officers.[6] However, *Miranda* announced a new prophylactic rule that did not depend on a finding of actual involuntariness: police officers must give adequate warnings of constitutional rights to remain silent and to consult with a lawyer prior to any custodial questioning of a person suspected of a crime, otherwise statements made in response to custodial interrogation would be inadmissible at a subsequent criminal trial. This holding was predicated on the Court's conclusion that "the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely" (384 U.S. at 467).

In *Miranda,* the Court based its conclusion that custodial interrogations were inherently coercive upon an examination of police practices that were then widely in use. It noted that, under these practices, a suspect "was thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures" designed "to subjugate the individual to the will of his examiner" (384 U.S. at 457). Referring to various police manuals and texts that set forth suggested interrogation techniques, the Court observed that "the modern practice of in-custody interrogation is psychologically rather than physically oriented" (*id.* at 448). These manuals emphasized incommuni-

[6] See, *e.g.*, *Brown* v. *Mississippi*, 297 U.S. 278; *Chambers* v. *Florida*, 309 U.S. 227; *White* v. *Texas*, 310 U.S. 530; *Payne* v. *Arkansas*, 356 U.S. 560; *Haynes* v. *Washington*, 373 U.S. 503.

cado interrogation in an oppressive police-dominated atmosphere, deceptive strategems and trickery, and constant questioning in order to undermine the will of the subject to resist.[7] Under these circumstances, which the Court found to be typical of police procedures, "the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals" (*id.* at 455).

None of the considerations that led the Court in *Miranda* to require warnings of constitutional rights in the circumstances there presented are applicable to the typical interview conducted by a special agent of the Internal Revenue Service. Although the Court has indicated that "custodial interrogations" may occur outside of a "police station," indicia of custody remain of critical importance to the inquiry, particularly whether the interrogee was under arrest and not free to leave. See *Orozco* v. *Texas,* 394 U.S. 324, 327.[8] The facts of the instant case—a typical criminal tax investigation—demonstrate that such interviews are not held under custodial conditions;

[7] The interrogation techniques discussed in *Miranda* also included confrontation of the suspect with his guilt as a fact, the offer to the suspect of legal excuses for his actions in order to induce an initial admission of guilt, and a show of some hostility. See 384 U.S. at 450–452.

[8] In *Orozco*, the Court applied *Miranda* to exclude incriminating evidence obtained by four police officers who held the suspect alone in custody in his own room in a boarding house and questioned him. Under those circumstances, the suspect was held to have been deprived of his freedom in a significant way. However, the Court's opinion states: "We do not, as the dissent implies, expand or extend to the slightest extent our *Miranda* decision" See 384 U.S. at 450–452.

the agents neither physically restrain nor detain the interviewee against his will.[9] Here, the agents testified without contradiction that they would have permitted petitioner to leave the house or terminate the interview (A. 33, 60). Thus, the inherent pressures upon a person taken into custody, which *Miranda* concluded could compel him to speak when he would not otherwise do so freely, are absent in this case. As the court of appeals correctly observed (Pet. App. A 2a–3a), petitioner "does not and could not reasonably assert that his interrogation was in custodial circumstances."

The significance of actual custody as a prerequisite for the application of *Miranda* to a federal tax investigation was subsequently reinforced by the Court's decision in *Mathis* v. *United States*, 391 U.S. 1. There, while the taxpayer was incarcerated in a state prison, an ordinary revenue agent questioned him in a "routine tax investigation." However, the agent did not warn the taxpayer of his right to remain silent and to consult with counsel. During the ensuing interview, the agent elicited oral statements and documents from the taxpayer on the basis of which he was subsequently convicted for filing false income tax refund claims. In reversing the conviction, the Court rejected the argument that *Miranda* was applicable only to questioning

[9] Special agents are empowered to arrest persons. See Section 7608(b)(2)(B) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 7608(b)(2)(B)). Upon an arrest, the agents are instructed to give the warnings prescribed by *Miranda* prior to any questioning. Here, petitioner was arrested in June 1973, ten months after the interview in question (A. 39).

of a person who is "in custody" in connection with the very case under investigation. It concluded that the term "custody" in its *Miranda* opinion was "clear and unequivocal" (391 U.S. at 5) and was intended to encompass any case where an individual is formally held by the authorities or deprived of his freedom for whatever reason.

The Court's emphasis upon the taxpayer's custodial situation strongly suggests that the converse, and equally important, teaching of *Mathis* is that if an individual is questioned by an Internal Revenue agent in a non-custodial setting where the individual is free to leave, the agent is not required to give the prescribed *Miranda* warnings. As the Court recently observed in *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 247, *"Miranda*, of course, did not reach investigative questioning of a person not in custody * * *."[10] See also *United States* v. *Scully*, 415 F. 2d 680, 684 (C.A. 2); *United States* v. *Webb*, 398 F. 2d 553 (C.A. 4).

Indeed, in light of these considerations, ten of the eleven courts of appeals (including the court below) have consistently rejected efforts to obtain suppression of admissions made by taxpayers in the course of non-custodial interviews. Four circuits have held that no warnings of any kind are necessary, in the

[10] One member of this Court appears to have already indicated his view that *Miranda* has no application to a non-custodial interview by a special agent. See *Kohatsu* v. *United States*, 351 F.2d 898 (C.A. 9), certiorari denied, 384 U.S. 1011 (statement of Douglas, J.). Compare, however, *Thomas* v. *United States*, 370 F.2d 96 (C.A. 5), certiorari denied, 386 U.S. 975 (statement of Douglas, J., indicating the importance of the question).

context of cases in which the taxpayer did not receive a warning of the kind given petitioner in this case;[11] every court of appeals except the Seventh Circuit has sustained admissibility in the context of cases in which some kind of warning was given."[12]

[11] See *United States* v. *Caiello*, 420 F. 2d 471 (C.A. 2), certiorari denied, 397 U.S. 1039; *United States* v. *Shlom*, 420 F. 2d 263 (C.A. 2) (dictum); *United States* v. *Prudden*, 424 F. 2d 1021 (C.A. 5), certiorari denied, 400 U.S. 831; *Spahr* v. *United States*, 409 F. 2d 1303 (C.A. 9), certiorari denied, 396 U.S. 840; *Hensley* v. *United States*, 406 F. 2d 481 (C.A. 10).

[12] First Circuit: *Taglianetti* v. *United States*, 398 F.2d 558, affirmed, 394 U.S. 316; *Spinney* v. *United States*, 385 F.2d 908, certiorari denied, 390 U.S. 921; *Morgan* v. *United States*, 377 F.2d 507; *Schlinsky* v. *United States*, 379 F.2d 735, certiorari denied, 389 U.S. 920.

Second Circuit: *United States* v. *White*, 417 F.2d 89; *United States* v. *Marcus*, 401 F.2d 563; *United States* v. *Mackiewicz*, 401 F.2d 219, certiorari denied, 393 U.S. 923; *United States* v. *Dawson*, 400 F.2d 194, certiorari denied, 393 U.S. 1023; *United States* v. *Squeri*, 398 F.2d 785.

Third Circuit: *United States* v. *Nemetz*, 450 F.2d 924, certiorari denied, 405 U.S. 988; *United States* v. *Jaskiewicz*, 433 F.2d 415, certiorari denied, 400 U.S. 1021.

Fourth Circuit: *United States* v. *Ramantanin*, 452 F.2d 670; *United States* v. *Browney*, 421 F.2d 48; *United States* v. *Bagdasian*, 398 F.2d 971; *United States* v. *Mancuso*, 378 F.2d 612.

Fifth Circuit: *United States* v. *Ehmig*, 488 F.2d 1074; *United States* v. *Prudden*, 424 F.2d 1021, certiorari denied, 400 U.S. 831; *Marcus* v. *United States*, 422 F.2d 752; *United States* v. *Jernigan*, 411 F.2d 471, certiorari denied, 396 U.S. 927; *Agoranos* v. *United States*, 409 F.2d 833, certiorari denied, 396 U.S. 824; *United States* v. *Tonahill*, 430 F.2d 1042.

Sixth Circuit: *United States* v. *Carter*, 462 F.2d 1252, 1256, certiorari denied, 409 U.S. 984; *United States* v. *Stribling*, 437 F.2d 765, certiorari denied, 402 U.S. 973; *United States* v. *Miriani*, 422 F.2d 150, 153–154, certiorari denied, 399 U.S. 910; *United States* v. *Maius*, 378 F.2d 716, certiorari denied, 389 U.S. 905.

Eighth Circuit: *United States* v. *Engle*, 458 F.2d 1017, certiorari denied, 409 U.S. 875; *United States* v. *Hiken*, 458 F.2d 24, certiorari denied, 409 U.S. 842; *United States* v. *MacLeod*, 436 F.2d 947, certiorari denied, 402 U.S. 907; *United States* v. *Brevik*, 422 F.2d 449, certiorari denied, 398 U.S. 943; *Ping* v. *United States*, 407 F.2d 157, certiorari denied, 395 U.S. 926; *Cohen* v. *United States*, 405 F.2d 34, certiorari denied, 394 U.S. 943; *Muse* v. *United States*, 405 F.2d 40, certiorari denied, 393 U.S. 1117; *Frohmann* v. *United States*, 380 F.2d 832, certiorari denied, 389 U.S. 976.

Ninth Circuit: *United States* v. *Chikata*, 427 F.2d 385; *Simon* v. *United States*, 421 F.2d 667, certiorari denied, 398 U.S. 904; *Feichtmeir* v. *United States*, 389 F.2d 498; *Selinger* v. *Bigler*, 377 F.2d 542, certiorari denied, 389 U.S. 904; *Rickey* v. *United States*, 360 F.2d 32, certiorari denied, 385 U.S. 835; *Kohatsu* v. *United States*, 351 F.2d 898, certiorari denied, 384 U.S. 1011.

Tenth Circuit: *United States* v. *Bettenhausen*, 499 F.2d 1223.

2. Recognizing that the agents' interview in this case did not rise to the level of a custodial interrogation, petitioner nevertheless argues (Br. 8–18) that full *Miranda* warnings must be given whenever an investigation reaches what he describes as an "accusatory" or "critical" stage. His contention, however, ignores the fact that the privilege against self-incrimination comes into play only when a person is *compelled* to give evidence against himself. In *Miranda*, the Court held that custodial interrogations are inherently compelling and render statements involuntary as a matter of law unless the subject is advised of his constitutional right to remain silent. But the fact that the suspicions of law enforcement authorities may have focused upon a particular individual and that they thereafter question him in a non-custodial setting does not endanger his constitutional rights unless the particular circumstances of the case indicate that the individual was compelled to make the statements.

In the course of their work, law enforcement officers have occasion to interview many persons whom they may regard with varying degrees of suspicion or "focus." However, the shifting developments in a criminal investigation cannot be the basis upon which it is determined to warn an individual of his constitutional rights. As Judge Friendly noted in *United States* v. *Hall*, 421 F. 2d 540, 544 (C.A. 2), certiorari denied, 397 U.S. 990, "a standard hinging on the inner intentions of the police * * * fail[s] to recognize *Miranda's* concern with the coercive effect of the 'atmosphere' from the point of view of the person being questioned."

Indeed, petitioner's "focus" test is expressly refuted by the Court's statement in *Miranda* that police "inquiry of persons not under restraint" or "other general questioning of citizens in the fact-finding process is not affected by [this] holding" (384 U.S. at 477). The bright line established by *Miranda* is that the warnings need only be given when the individual is "taken into custody or otherwise deprived of his freedom of action in any significant way" (*id.* at 444). Thus, in non-custodial situations, the only relevant question under the Fifth Amendment is whether the individual's statements are voluntary. The mere fact that he might not have cooperated with the law enforcement officers had he known that their investigation focused upon him does not establish as a matter of law that he has been coerced into waiving his Fifth Amendment rights.

Moreover, the circumstances of this case demonstrate that petitioner cannot even meet his proposed

"focus" or "critical stage" test. At the time of the agents' interview, the tax investigation of petitioner was in its earliest stages, and the agents had not determined whether the case would ever ripen into a recommendation for criminal prosecution. Although petitioner attempts to characterize this case as "exclusively criminal" (Br. 8), every criminal tax investigation has a civil aspect, because the taxpayer is liable, at all events, for any tax he evaded. See *United States* v. *Stribling*, 437 F.2d 765, 773 (C.A. 6), certiorari denied, 402 U.S. 978."

Finally petitioner relies (Br. 11) upon *Escobedo* v. *Illinois*, 378 U.S. 478, a case that this Court has stated is not to be broadly extended beyond its particular facts (*Michigan* v. *Tucker*, *supra*, 417 U.S. at 438). At all events, *Escobedo* does not support the imposition of *Miranda* warnings in a non-custodial setting. There, the "suspect * * * [had] been taken into police custody, the police * * * [carried] out a process of interrogations that lends itself to eliciting incriminating statements, the suspect * * * [had] requested and been denied an opportunity to consult with his lawyer, and the police * * * [had] not effectively warned him of his absolute constitutional right to remain silent" (378 U.S. at 490–491). While petitioner (Br. 10–12) emphasizes the references in *Escobedo* to an "investigation * * * [which] has begun to focus on a particular suspect" (*id.* at 490),

[11] Similarly, the fact that petitioner was also investigated because of alleged involvement in narcotics dealing does not establish that this tax case was "exclusively criminal" in character. See *United States* v. *Moore*, 485 F.2d 1165, 1167 (C.A. 5).

the Court was careful to point out in *Miranda* that its statement in *Escobedo* regarding an investigation which had focused on an accused meant no more than "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda* v. *Arizona, supra,* 384 U.S. at 444 and n. 4. As Judge Friendly observed in *United States* v. *Hall, supra,* 421 F.2d at 544: "The test [for determining 'custody'] must thus be an objective one. Clearly the Court [in *Miranda*] meant that *something* more than official interrogation must be shown. It is hard to suppose that suspicion alone was thought to constitute that something; almost all official interrogation of persons who later become criminal defendants stems from that very source" (emphasis in original). See also *Lowe* v. *United States,* 407 F.2d 1391, 1393 (C.A. 9); *United States* v. *Squeri,* 398 F.2d 785, 790 n. 1 (C.A. 2).[14]

[14] None of the other cases relied upon by petitioner (Br. 17) supports the argument that *Miranda* warnings are required when an investigation reaches a "critical" stage. Like *Escobedo*, those decisions all involve either "points of time at or after the initiation of adversary judicial criminal proceedings" (see *Kirby* v. *Illinois*, 406 U.S. 682, 689), or situations where the defendant was in police custody.

Perhaps the case that comes closest to supporting petitioner's contention in this respect is *United States* v. *Mandujano*, 496 F.2d 1050 (C.A. 5), certiorari granted, 420 U.S. 989, upon which petitioner relies (Br. 34, 36). There, the court of appeals held that grand jury witnesses who are "putative defendants" must be given full *Miranda* warnings prior to being questioned before the grand jury. For reasons set forth at some length in our brief in *Mandujano* (No. 74-754), the "focus" or "putative defendant" rationale no more justifies a requirement of full *Miranda* warnings for grand jury witnesses than it does in the present context.

B. A SPECIAL AGENT'S NON-CUSTODIAL INTERVIEW OF A TAXPAYER IS NOT SO INHERENTLY COERCIVE AS TO REQUIRE THE AGENT TO WARN THE TAXPAYER OF HIS CONSTITUTIONAL RIGHTS

It would seem clear that the only justification for introducing the strict prophylactic requirements of *Miranda* into the context of the normal, non-custodial tax investigation would be if the manner in which such investigations are typically conducted entails a high incidence of actual or potential abuse, as was found to be the case with incommunicado police interrogation in *Miranda*. But there is nothing in the typical interview by a special agent of the Internal Revenue Service, or in the particular interview in this case, that is so inherently coercive as to warrant application of the *Miranda* procedural safeguards.

1. Here, the agents did not subject petitioner to any psychological pressures or deceptive interrogation techniques that might have impaired his ability to make rational judgments or have misled him. Unlike the relentless incommunicado questioning recommended by the police manuals considered in *Miranda*, the agents conducted the interview in a congenial manner at the house of a friend of petitioner. During the interview, petitioner was not threatened in an isolated environment; in fact, his friend continued to remain on the premises. In addition, petitioner either refused to or could not respond to several of the agents' questions, and in those instances they did not press him any further (A. 59-60).[15] Finally, near the end of the

[15] The agent testified that he interviewed petitioner at the home in which he was staying rather than at the liquor store that was his place of business in order to avoid any possible embarrassment to petitioner (A. 13).

interview, petitioner stated to the agents that his answers were given of his own volition and that the agents had not subjected him to any threats or duress (Tr. 85). Thus, under no stretch of the imagination can petitioner be equated to the individual described in *Miranda,* who is "swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion" (384 U.S. at 461). Under these circumstances, the court of appeals properly concluded (Pet. App. A 3a–4a) that the "interview had none of the indicia of coercion that motivated the *Miranda* scrutiny of investigative methods and thus it cannot be seriously argued that [petitioner] was 'compelled' to answer any questions." [16]

2. The considerations that support affirmance of the decision below on the facts of this particular case also demonstrate the unwisdom of any extension of the *Miranda* rule to non-custodial federal tax inves-

[16] Although our primary position is that a special agent is not required to give a taxpayer any warnings of his constitutional rights unless the taxpayer is taken into custody or if there is other evidence of coercion, it is not without significance that the agents initially advised petitioner that their function was to investigate criminal tax fraud, that he could not be compelled to supply any incriminating information, that any information could be used against him in a criminal proceeding, and that he had a right to consult with a lawyer. As we discuss in Part C, *infra*, this "modified *Miranda*" warning was adopted by the Internal Revenue Service in 1968. While we do not believe that the Internal Revenue Service is required to give such a warning, its use in this case is additional evidence of the non-coercive character of the agents' interview. See *United States* v. *Caiello*, 420 F.2d 471, 473 (C.A. 2), certiorari denied, 397 U.S. 1039.

tigations. On the whole, the typical interview by a special agent is not at all intimidating in the fashion of police station interrogation to which a suspect is involuntarily brought. Unlike incommunicado police questioning, which is continuously pursued to bring the guilty to book as quickly as possible, a criminal tax investigation involves the gathering and analysis of a complex set of facts, a process that usually lasts several years before any decision whether to formally charge the taxpayer.[17] The taxpayer in a criminal tax investigation is not pressured to make quick admissions at the outset of the inquiry.

Similarly, in contrast to police interrogations, which usually involve investigations into conduct of a concededly criminal character, a tax inquiry focuses upon the financial affairs of the taxpayer in order to determine his correct tax liability. It is not unreasonable to assume that a taxpayer possesses the most reliable information concerning the subject of the agent's inquiry. Indeed, pursuant to the requirements of Section 6001 of the Internal Revenue Code, "Every person liable for any tax * * * shall keep such records * * * and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe." Moreover, the questions posed by a special agent to a taxpayer are little more than adjuncts to the questions on the income tax return itself and are

[17] Here, in a relatively simple case involving an individual's tax liability for two years, petitioner was not arrested until ten months after the interview. See also *Cohen* v. *United States*, 405 F.2d 34 (C.A. 8), certiorari denied, 394 U.S. 943 (investigation lasted two and a half years).

one means by which the Treasury insures that taxpayers file accurate returns under our self-reporting system. That system cannot function effectively without taxpayer cooperation with the Internal Revenue Service.

Moreover, the development of a criminal tax case proceeds gradually, and the decision to assign a special agent is not decisive that the taxpayer will be prosecuted. While there is always the possibility that the special agent's work will result in a criminal prosecution, the same can be said of the audit conducted by the ordinary revenue agent. See *Mathis* v. *United States, supra,* 391 U.S. at 4. Both these officials employ the interview in order to obtain additional information to corroborate the taxpayer's own reported income and claimed deductions. Since the vast majority of investigations result in either civil consequences or no consequences, it hardly seems appropriate to encumber the non-custodial audit interview with full-blown *Miranda* warnings simply because a special agent has entered the case.[18] See, *e.g., United States* v. *Prudden,* 424 F.2d 1021, 1028–1029 (C.A. 5), certiorari denied, 400 U.S. 831; *United States* v. *Mackiewicz,* 401 F.2d 219, 222 (C.A. 2), certiorari denied, 393 U.S. 923; *Morgan* v. *United States,* 377 F.2d 507, 508 (C.A. 1).

[18] In 1972, the Internal Revenue Service initially screened 132,000 allegations of tax fraud, completed 8,882 investigations, and recommended prosecution in 1,777 cases. Indictments were secured in 1,074 cases; 772 defendants pleaded guilty and 113 were convicted following trial. See Annual Report of the Commissioner of Internal Revenue 17 (1972).

Finally, unlike police interrogations, the special agents' interviews at issue here are informal and are conducted in a relatively friendly manner. Such interviews are usually conducted in the familiar surroundings of the taxpayer's home or office. Even if it is held at the agent's office, the interview is typically pursuant to an appointment arranged in advance. These characteristics are not only evident from the facts of this case but from the circumstances considered in the decisions of the nine other circuits that have held that a special agent is not required to warn a taxpayer of his rights in accordance with *Miranda* prior to interviewing him in a non-custodial setting.[19] None of those cases involved conduct by the agents that could remotely be deemed overbearing or coercive. Thus, it can be safely concluded that, in light of the large number of cases presented to the lower courts involving this question, a special agent's interviews do not require the imposition of *Miranda* warnings to dispel the compulsion deemed to be present in actual custodial situations. While there may be instances in which improper pressure is brought to bear upon a taxpayer under investigation, those cases can be appraised under the pre-*Miranda* voluntariness test in order to determine whether compulsion existed under the totality of their particular circumstances. See, *e.g., United States* v. *Jaskiewicz,* 433 F.2d 415, 420 (C.A. 3), certiorari denied, 400 U.S. 1021; *Schlinsky* v. *United States,* 379 F.2d 735, 738 (C.A. 1), certiorari denied, 389 U.S. 920.

[19] See notes 11 and 12, *supra.*

The application of the voluntariness test to the interview of a taxpayer by a special agent is supported by the directly analogous situation considered in *Schneckloth* v. *Bustamonte,* 412 U.S. 218. There, the Court held that an individual who was not in custody could validly consent to a search of his automobile even though he had not been told that he had a right to withhold his consent. In so holding, the Court relied upon its pre-*Miranda* decisions (412 U.S. at 227–234) applying the traditional voluntariness test by assessing the totality of circumstances in a given case to determine whether a defendant's statements were coerced. As the Court there observed, in terms which are equally appropriate to this case, "since consent searches will normally occur on a person's own familiar territory, the specter of incommunicado police interrogation in some remote station house is simply inapposite" (412 U.S. 247). Thus, just as there was no reason for the Court to conclude in *Schneckloth* that responses to a policeman's questions were presumptively coerced, here too there is no basis to petitioner's claim that a special agent's interview is inherently coercive in the absence of warnings.

3. Petitioner argues (Br. 18–32) that an interview by an Internal Revenue Service Agent has a "psychologically coercive effect upon the taxpayer" because of the self-declaring nature of the tax laws (Br. 18–19), the assumption by the taxpayer that he is merely discussing a civil obligation (Br 20–22), the complexity of the tax laws and the ignorance of the average per-

son as to what constitutes a criminal violation or an incriminating statement (Br. 22–25), and the suggestion that taxpayers fear that non-cooperation will prove very expensive and embarrassing (Br. 27–29). But these factors do not establish the atmosphere of coercion upon which *Miranda* rests. The fact that a person may believe that he is obliged to cooperate with law enforcement officers does not render his statements involuntary unless the officers are responsible, either by word or deed, for the individual's misapprehension. The compulsion must come from the officers, not from the inner feelings of the interrogee. Indeed, if that were not the case, every instance of police questioning in which a person voluntarily made incriminating statements would be deemed to be coercive in the absence of warnings—a proposition the Court has emphatically rejected. As this Court observed in *Shotwell Mfg. Co.* v. *United States,* 371 U.S. 341, 348, "A coerced confession claim * * * always involves this question: did the *governmental conduct* complained of 'bring about' a confession 'not freely self-determined'?" (emphasis supplied). See also *Rogers* v. *Richmond,* 365 U.S. 534, 544."

4. The sole appellate authority supporting petitioner's position that a special agent must give a

[21] Petitioner's generalized allegation (Br. 18) that the practices of the Internal Revenue Service are "designed to jeopardize constitutional rights" is wholly without foundation. In support of his contention, petitioner refers to the following facts: (1) ordinary revenue agents are directed to suspend their investigation, without disclosing the reason for such action, when they discover what they believe to be indications of fraud (Br. 26); (2) agents

Miranda warning to a taxpayer under investigation is *United States* v. *Dickerson,* 413 F.2d 1111 (C.A. 7). There, a divided panel of the Seventh Circuit held that *Miranda* turned neither on the custody of the defendant nor on the inherent compulsion of incommunicado police station interrogation, but on the suspect's inability to waive his rights intelligently when "confronted with governmental authority in an adversary situation * * *" (413 F.2d at 1114). Accordingly, that court concluded that the agents must give the taxpayer *Miranda* warnings upon their first contact with him after the case is referred to the Intelligence Division for criminal investigation.

Contrary to the Seventh Circuit's analysis, *Miranda* turned on the coercive atmosphere of in-custody interrogation and not on the fact that an "adversary

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are directed to attempt to obtain figures as to cash on hand (Br. 27); (3) they should display pleasant emotions in interviews with the taxpayer (Br. 27, n. 19); and (4) they generally make their first contact with the taxpayer and not with his representative (Br. 26). None of these practices, either by themselves or in the aggregate, supports petitioner's claim that "[a]gents are trained to discourage the free exercise of constitutional rights" (Br. 26).

An Internal Revenue Service agent is not obligated to disclose all of his suspicions to an individual under investigation, any more than any other type of law enforcement officer. Nor is there anything improper in the agent seeking cash-on-hand figures for use in reconstructing income; such computations, it may be noted, have civil as well as criminal consequences. Similarly, it can hardly be contended that an agent's friendly demeanor constitutes a violation of constitutional rights. Finally, an initial meeting by the agent with the taxpayer rather than his representative does not infringe upon the taxpayer's rights where no right to counsel exists. These assertions by petitioner of violations of his constitutional rights border on the frivolous.

situation" existed between an individual and law enforcement officers. As we have pointed out, the Court in *Mathis* v. *United States, supra,* 391 U.S. at 4–5, emphasized the custodial aspect of the interrogation of the defendant rather than his confrontation with governmental authority during a routine civil audit. Similarly, in *Orozco* v. *Texas,* 394 U.S. 324, the Court upheld the defendant's *Miranda* claim only on the ground that he was under arrest and therefore not free to leave during the interrogation. Finally, in *Hoffa* v. *United States,* 385 U.S. 293, the Court rejected the defendant's contention that, although he was not under arrest or in custody at the time of his incriminating statements to an undercover agent, he was entitled to *Miranda* warnings because the government confronted him by means of an undercover agent. It was the compulsive aspect of custodial interrogation, and not simply the contact between the defendant and the law enforcement officers, which led the Court to impose the warnings prescribed in *Miranda.*

Likewise, the *Dickerson* court's statement that "[i]ntelligent exercise or waiver of the Fifth Amendment privilege is the heart of [this] Court's concern in *Miranda*" (413 F.2d at 1114) misreads the Court's opinion in that case. In discussing the exercise of the Fifth Amendment privilege, *Miranda* did not bar as unconstitutional "[a]ny statement given freely and voluntarily without any compelling influences" (384 U.S. at 478), even though such statements were given without full knowledge of their consequences. Simi-

larly, the Court in *Hoffa* v. *United States, supra,* 385 U.S. at 303–304, rejected the notion that because a defendant's conversations with an undercover agent occurred without "intelligent waiver," the resulting evidence should be excluded. Instead, the Court premised its decision entirely on the ground that the defendant's incriminating statements were not "the product of any sort of coercion, legal or factual" (385 U.S. at 304).[22] As the court of appeals correctly concluded in the instant case, the *Dickerson* emphasis upon intelligent waiver "confuses the requisites of *compulsion* which bring to bear Fifth Amendment interests with the requisites of a *waiver* of Fifth Amendment rights once those rights attach" (Pet. App. A 4a; emphasis in original).

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[22] Subsequent to *Dickerson*, the Seventh Circuit held in *United States* v. *Oliver*, 505 F.2d 301, that the same Internal Revenue Service warning given in this case was inadequate under *Miranda*. It accordingly reversed a conviction for income tax evasion based upon the taxpayer's statements to special agents. *Oliver* is, however, significantly different factually from the instant case. In *Oliver*, while the defendant was questioned at the office of the special agents, a person appeared and claimed to have a message for him from his attorney. The defendant was not advised of this fact, and the interview continued (see 505 F.2d at 304–306). In reversing the conviction, the Seventh Circuit held that the defendant was, in effect, deprived of his freedom of action in a significant way during the interview and should have had *Miranda* warnings rather than the "modified *Miranda*" warnings employed by the Internal Revenue Service in this case. Although the Seventh Circuit noted its disapproval of the Internal Revenue Service's failure to instruct its special agents to give full *Miranda* warnings (505 F.2d at 304 n. 6), the decision turned largely on the peculiar quasi-custodial setting of the interview.

C. IF SOME FORM OF WARNING TO A TAXPAYER UNDER INVESTIGATION IS REQUIRED AT HIS INITIAL INTERVIEW BY A SPECIAL AGENT, THE AGENTS' WARNING IN THIS CASE WAS SUFFICIENT TO INSURE THAT PETITIONER'S STATEMENTS WERE VOLUNTARY

1. In *Miranda,* this Court required law enforcement officers to give the following warnings prior to questioning a suspect in a custodial interrogation (384 U.S. at 444):

> [T]he person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.

Here, at the outset, the special agents advised petitioner of his rights in the following terms (Pet. App. A 4a n. 6):

> Under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any information which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding.

A simple comparison between this Court's *Miranda* warnings and the warning employed by the special agents demonstrates that the warnings in this case substantially conform to the *Miranda* formula. One difference involves the unqualified right of silence

stated in the *Miranda* formulation; in the warning administered by Internal Revenue Service special agents, the taxpayer is advised that he cannot be compelled to answer any questions or to submit any information if such answers or information might tend to incriminate him. Although petitioner argues (Br. 37–38) that the agents' warning was inadequate to describe his "right" to total silence, the prophylactic warning of a right to remain silent is addressed to the incommunicado custodial setting where the protection of the interrogee was deemed to be best achieved if he were advised that he may say nothing to the police.

But it is the Internal Revenue Service formulation and not the *Miranda* warning that accurately states the right safeguarded by the self-incrimination privilege, and, in the non-custodial setting, the prophylactic need for the broader formulation is absent. Indeed, the warning employed in this case conforms to the fact that a taxpayer ultimately has no right to refuse to answer any and all of a revenue agent's questions,[23] but may only withhold information that might incriminate him.[24]

[23] To the extent that information is not covered by the taxpayer's Fifth Amendment privilege, an agent can compel testimony and production of documents by use of the summons power. Such summonses are enforceable in the district courts, and the summoned party must obey under pain of contempt. See Sections 7602 and 7604 of the Internal Revenue Code.

[24] The second element of the agent's warning—that anything petitioner said could be used against him in a criminal proceeding—is fully equivalent to the *Miranda* requirements that the individual be warned that any statement he does make may be used as evidence against him. Indeed, it gives specific notice that a criminal investigation is in progress. Petitioner was also advised of the criminal aspects of the investigation when the special agents informed him that their function was to investigate the possibility of criminal tax fraud (A. 15).

The *Miranda* requirement that the individual be advised that he has a right to the presence of an attorney was met by the agents' admonition that petitioner could, if he desired, seek the assistance of an attorney before responding to their questions. The only element missing from the agents' warnings was a statement that petitioner had a right to an appointed lawyer. In the non-custodial setting of the tax interview, the need for counsel to neutralize potentialities for coercion is, of course, dramatically diminished. Moreover, the absence of advice regarding appointment of counsel for indigents is singularly unlikely to be significant in the tax investigation context, since a person under investigation for criminal tax violations is ordinarily able to afford the services of an attorney, unlike persons suspected of many other kinds of offenses. Indeed, there is no presently established procedure for providing appointed counsel at this stage of an investigation for persons financially unable to obtain adequate representation, nor any Sixth Amendment right to such appointment. See 18 U.S.C. 3006A(a); *Kirby* v. *Illinois,* 406 U.S. 682. Thus, in all important respects, the agents' preliminary warnings to petitioner were sufficient to insure—if insurance of this sort be needed—that his statements to them were voluntary.

2. The warnings given by the agents in this case reflect a procedure adopted by the Internal Revenue Service in 1968 (A. 67–68). As the accompanying public announcement correctly stated, this procedure "goes beyond most legal requirements that are designed to advise persons of their rights" (A. 67). However, the Internal Revenue Service adopted the warning procedure in order to eliminate possible uncertainty surrounding the application of this Court's *Miranda* decision to federal tax investigations. The Court's decision only 23 months later in *Mathis* v. *United States, supra,* holding that a taxpayer incarcerated in a state prison was entitled to *Miranda* warnings from an ordinary revenue agent, in fact refused to accept the government's argument that *Miranda* had no application to routine tax investigations, the Court expressly rejecting "the contention that tax investigations are immune from the *Miranda* requirements for warnings to be given a person in custody" (391 U.S. at 4).

Although we believe that *Mathis* turned on the custodial aspects of the interview, the Service was originally concerned that it augured an extension of *Miranda* to non-custodial interviews by its agents. Moreover, at the time *Miranda* was decided, the Service found that the practices of its special agents with respect to warning taxpayers under investigation of their constitutional rights varied widely from district

to district. Accordingly, it adopted the warnings used in this case out of an abundance of caution, in order to establish a uniform administrative practice and to insure that its criminal tax prosecutions would not be jeopardized. In light of the virtual unanimity of the courts of appeals in holding that such warnings are not required in a non-custodial setting, it appears that the reasons for the adoption of the warning may no longer exist.[25]

We therefore submit that the Internal Revenue Service should now be free, if it concludes that such a course is wise, to adopt a uniform policy dispensing with the warning, and we urge this Court to so hold. However, if some form of warning to the taxpayer under investigation by special agents is deemed to be required, it is beyond question that the warning employed in this case is more than sufficient to insure that taxpayers' statements under these circumstances will be voluntarily made.

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[25] Three courts of appeals have indicated that when the special agents fail to give the warnings required by the procedures adopted by the Internal Revenue Service, statements obtained from the taxpayer must be suppressed (on due process rather than self-incrimination grounds). See *United States* v. *Heffner*, 420 F.2d 809 (C.A. 4); *United States* v. *Leahey*, 434 F.2d 7 (C.A. 1); and *United States* v. *Sourapas*, 515 F.2d 295 (C.A. 9). Contra: *United States* v. *Leonard*, C.A. 2, No. 75–1153, decided August 28, 1975, slip op. 5861 (dictum); *United States* v. *Fukushima*, 373 F. Supp. 212 (D. Hawaii). While we disagree with such holdings, the question whether agents must comply with the currently announced warning procedures adopted by the Internal Revenue Service is not at issue in this case.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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